

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
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)	
Joint Petition of Sprint Spectrum L.P.)	WT Docket No. 97-82
and US WEST Wireless, LLC for)	
Reconsideration of the C Block Fourth Report)	
and Order, released August 18, 1998)	
)	

Comments in Opposition

The Office of Advocacy of the United States Small Business Administration (“Advocacy”)¹ hereby opposes a joint petition filed by Sprint Spectrum L.P. and US WEST Wireless, LLC (“Joint Petitioners”), seeking modification of rules that the Federal Communications Commission (“Commission”) issued to govern the auction of C-Block broadband Personal Communications Services (“PCS”) spectrum. Joint Petitioners propose eliminating the designated entity eligibility restrictions in order to permit large businesses to bid on C-Block PCS licenses in the upcoming re-auction. Joint Petitioners also propose dividing the 30 MHz C-Block licenses into three 10 MHz licenses. Advocacy opposes Joint Petitioners’ proposals. The Commission should retain its current eligibility restrictions and should not alter the spectrum size of the C-Block 30 MHz licenses.

Joint Petitioners argue that by dividing each 30 MHz C-Block PCS license into three 10 MHz licenses, the Commission would increase the number of total licenses available in the upcoming auction, and therefore would compensate small businesses for the loss of designated

¹ Congress established the Office of Advocacy in 1976 by Pub. L. No. 94-305 to represent the interests of small business within the Federal government. *See* 15 U.S.C. §§ 634 (a)-(g), 637. Advocacy serves as a focal point for concerns regarding the government policy as it affects small business. Advocacy develops proposals for changes in Federal policy and communicates proposals to the Federal agencies. *See* 15 U.S.C. § 634(c)(1)-(4). Advocacy also has a statutory duty to monitor and report to Congress on the Commission’s compliance with the RFA.

entity exclusivity on the C Block. According to Joint Petitioners, increasing the number of licenses will increase the opportunity for small businesses to obtain C-Block licenses. This argument is spurious.

Increasing the number of licenses will not increase small business opportunity if small businesses are forced to compete at auction with large businesses. Any large business interested in any 10 MHz license in any market would successfully bid for that license against any small business. Therefore, designated entities could obtain only those licenses desirable to no large business. No small business would be able to obtain any PCS license in any market valued by large companies if the Commission relaxes its eligibility standards for C-Block licenses. Certainly no small business could obtain PCS licenses in any of the most populous markets, which the large companies value particularly.

In prior proceedings, the Commission reiterated Congress's intent to promote competition in telecommunications by increasing the diversity of licensees and assuring that small businesses and women and minority owned businesses have access to these licenses.² In assuring designated entity access to PCS, the Commission has stated that bidding credits would be insufficient to compensate for the large sums of money that these licenses would command.³ The Commission has further recognized that small businesses cannot prevail at auction against large companies.⁴ "[S]mall entities stand little chance of acquiring licenses in these broadband auctions if required to bid against existing large companies, particularly large telephone, cellular

² Congress seeks to diversify the telecommunications marketplace and discourage concentration of licenses among a few companies. *See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Fifth Report and Order*, PP Docket No. 93-253 (1994). Congress believes that disseminating licenses among various applicants, including small businesses, minority-owned businesses, and women-owned businesses, will increase competition for telecommunications services. *Id.*

³ *Id.*, paragraph 96.

⁴ The Commission recognizes that auctions erect barriers to participation by designated entities by raising the cost of entry into spectrum-based services. *Id.*, paragraph 9.

and cable television companies. If one or more of these big firms targets a market for strategic reasons, there is almost no likelihood that it could be outbid by a small business.”⁵ And permitting large companies to outbid small businesses would “frustrate Congress’s goal of disseminating licenses among a diversity of licenses.”⁶ Therefore, the Commission set aside PCS spectrum for exclusive access by designated entities.⁷

Experience has proved the Commission correct in these earlier findings. PCS spectrum has produced astonishing revenue for the federal treasury, and continues to hold value and attract big money.⁸ In the course of a prior re-auction of C-Block PCS spectrum, the Commission reiterated (not for the first time) that designated entities must have exclusive access to the C- and F-Blocks if they are to have any opportunity to compete to provide PCS services.⁹

Joint Petitioners argue that the Commission did not adequately consider changes in telecommunications over the last several years when it reaffirmed its designated entity rules. Joint Petitioners assert that those rules “no longer reflect an appropriate balance of the factors that Congress directed the Commission to further in its auction rules.”¹⁰ However, Joint Petitioners do not explain what changes have occurred or how they affect the congressionally-directed balance of factors. In fact, no changes have occurred that should alter the Commission’s assessment of the appropriate way to assure that a variety of entities have opportunities to provide wireless services. Rather, events that have occurred on the C-Block reinforce the

⁵ *Id.*, paragraph 121.

⁶ *Id.*, paragraph 123.

⁷ *Id.*, paragraph 12.

⁸ Chairman Kennard expects the licenses formerly held by NextWave Personal Telecommunications, Inc. to sell for as high as \$10 billion. See *Communications Daily*, February 14, 2000, vol. 20, number 29.

⁹ See *Installment Payment Financing for Personal Communications Services (PCS) Licenses, Order on Reconsideration of the Second Report and Order*, WT Docket No. 97-82 (1988). See also, *Installment Payment Financing for Personal Communications Services (PCS) Licenses, Second Report and Order*, WT Docket No. 97-82 (1987); *Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Fifth Memorandum Opinion and Order*, PP Docket No. 93-253 (1994).

¹⁰ US WEST Wireless, LLC and Sprint Spectrum L.P., *Petition for Reconsideration (Expedited Action Requested)*,

wisdom of the Commission's current policy.

After the original C-Block auction, several license winners were unable to pay for their bids. In response to these repayment problems, the Commission eliminated its installment payment plan, which may have contributed to excessive bidding in the original PCS C- and F-Block auction. Since then, the Commission has successfully re-auctioned C- and F-Block licenses, for reasonable sums, to licensees who have paid for their licenses in full. The failure of a few companies to satisfy the Commission's requirements is no reason to abandon Congress's goal that small business be afforded the opportunity to compete for wireless telephone customers. The failure of one or a few companies to pay for spectrum for which they bid too high does not mean that small business has failed or will fail to compete in the wireless marketplace.

On the contrary, the results of the C-Block re-auction demonstrate that small business is interested in providing broadband PCS and is capable of competing with large business to do so. A number of small operators have launched service,¹¹ and many more plan to begin service in the coming months. These licenses are all paid in full. Today, small businesses are bringing competitive PCS services to the marketplace. This success has occurred within the context of C-Block exclusivity, not in an atmosphere of big-business bidding competition, and justifies the Commission's policy to achieve diversity.

Joint Petitioners offer no sound public policy reason for the Commission to deviate from its C-Block rules in order to permit big business participation in the upcoming re-auction. Small businesses have demonstrated that they can compete to provide PCS. Small businesses play a

filed April 4, 2000, page 3.

¹¹ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Fourth Report*, FCC 99-136 (released June 24, 1999), page 31.

crucial role in experimentation and innovation, which lead to the development of new technologies and the growth of economic productivity. Small businesses create nearly all new jobs and serve as an essential mechanism for entry by millions of people, including minorities, women, and immigrants, into the American economy. Given the tremendous rate of mergers and alliances between large companies, small businesses are the best hope to provide competition and choice of under-served areas. Disseminating spectrum licenses among a variety of applicants, notably small, minority, and women owned businesses, will continue to increase competition and bring innovative technologies to consumers.

This is no time to abandon the Commission's C-Block eligibility restrictions. To do so would eliminate the chance that any additional designated entities will enter the PCS marketplace, and would seriously damage those designated entities that are currently licensed on this spectrum. Thus, the Commission should retain its designated entity restrictions, without reservation, for the upcoming C- and F-Block re-auction.

Respectfully submitted,

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April 17, 2000